



No. Court File No. PRG-S-S-2564901  
Prince George Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

CITY OF PRINCE GEORGE

**PLAINTIFF**

**AND:**

BELVERY EDWARD JOHNNY also known as BEL JOHNNY,  
JANE DOE, JOHN DOE and OTHER PERSONS UNKNOWN

**DEFENDANTS**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named Registry of this Court within the time for the Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named Registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by Order of the Court, within that time.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### The Parties

1. The plaintiff, City of Prince George (the “**City**”) is a municipality incorporated and maintained under the *Local Government Act*, SBC 2015, c. 2 (the “**LGA**”) and *Community Charter*, SBC 2003, c. 26 (the “**Community Charter**”).
2. The defendant, Belvery Edward Johnny also known as Bel Johnny (“**Mr. Johnny**”), is a person encamped upon lands owned by the City, which are further described below.
3. The defendants, “Jane Doe, John Doe and Other Persons Unknown” are persons, approximately two to four in number, whose identities are unknown to the City, and who, at the time of commencement of this action, are encamped upon lands owned by the City, which are further described below.

#### The City Lands

4. The City is the owner of lands located within its geographic boundaries described as:
  - a. Lower Patricia Boulevard right-of-way;
  - b. Lower Patricia Boulevard East right-of-way;
  - c. Ottawa Street right-of-way;
  - d. London Street right-of-way;
  - e. 3<sup>rd</sup> Avenue right-of-way;
  - f. 4<sup>th</sup> Avenue right-of-way;
  - g. 5<sup>th</sup> Avenue right-of-way;
  - h. Block M1, District Lot 343, Cariboo District, Plan 1268, PID: 015-091-465 (bearing a civic address of “**498 Ottawa Street**”);
  - i. Block M, District Lot 343, Cariboo District, Plan 1268, PID: 015-091-589 (“**Block M**”);

- j. Block N, District Lot 343, Cariboo District, Plan 1268, PID: 015-091-481 (“**Block N**”); and
- k. Block N1, District Lot 343, Cariboo District, Plan 1268, PID 015-091-511 (**Block N1**”),

represented by those shaded portions of such lands extending east to west from the intersections of Lower Patricia Boulevard from Queensway to Provincial Highway 16/1<sup>st</sup> Avenue, as shown in Appendix A to this notice of civil claim (the “**City Lands**”).

- 5. Pursuant to s. 35 of the *Community Charter*, the soil and freehold of the Lower Patricia Boulevard, Ottawa Street, London Street and 4<sup>th</sup> Avenue rights-of-way are vested in the City.

**City Authority and Land Use Regulation**

*Zoning Bylaw*

- 6. Pursuant to the authority contained in s. 479 of the *LGA*, the City has lawfully adopted City of Prince George Zoning Bylaw No. 7850, 2007, as amended (the “**Zoning Bylaw**”).
- 7. Pursuant to the Zoning Bylaw, 498 Ottawa Street, Block M and Block N are located within the P1 (Parks and Recreation) Zone, the sole permitted uses of which are as follows:

<b>P1: Parks and Recreation</b>	
<p><b>Principal Uses</b></p> <ul style="list-style-type: none"> <li>• park</li> <li>• recreation, outdoor</li> </ul>	<p><b>Secondary Uses</b></p> <ul style="list-style-type: none"> <li>• boat launch</li> <li>• boat lift</li> <li>• community care facility, major</li> <li>• community care facility, minor</li> <li>• dock</li> <li>• equestrian centre, minor</li> <li>• residential security/operator unit</li> <li>• restaurant</li> <li>• retail, convenience</li> <li>• utility, minor</li> </ul>

8. Pursuant to the Zoning Bylaw:
  - a. “Park .... does not include a campground”; and
  - b. “Campground” means “land which has been planned, improved, or occupied for the seasonal short term use of tents, and recreational vehicles, and is not used as year round storage or accommodation for residential use for a period exceeding 240 days in a calendar year”.
9. Within the Zoning Bylaw, provision is otherwise made for the lawful use of lands within the City as a “campground” within the following zones: RM9 (Manufactured Home Park), C5 (Visitor Commercial), and Z2 (Exhibition Park).

*Parks and Open Space Bylaw*

10. Pursuant to s. 8(3)(b) of the *Community Charter* the City may, by bylaw, regulate, prohibit and impose requirements in relation to public places.
11. The City Lands are “public places” within the meaning of s. 8(3)(b) of the *Community Charter*.
12. Exercising the authority contained in s. 8 of the *Community Charter*, on March 25, 2022, the City lawfully adopted the Parks and Open Space Bylaw No. 7370, 2022, as amended (the “**Parks and Open Space Bylaw**”).
13. On May 8, 2023 the City lawfully adopted City of Prince George Bylaw No. 9389, 2023, amending the Parks and Open Space Bylaw so as to make provision for temporary overnight sheltering for people experiencing homelessness, in accordance with the limited right pursuant to s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the “**Charter**”) identified by the court in *Adams BCCA*.
14. Pursuant to the Parks and Open Space Bylaw:
  - a. An “Open Space Area” includes “all land ... held by the City as public open space” (s. 1.1(l)); and
  - b. No person shall set up a tent or other temporary abode in an Open Space Area, except in accordance with rules established under the bylaw for Temporary Overnight Sheltering (s. 9.1).
15. The provisions of the Parks and Open Space Bylaw relating to temporary overnight sheltering include, *inter alia*, that where there is no accessible overnight shelter accommodation available within the City of Prince George, a homeless person may,

between the hours of 7:00 pm and the 9:00 am the following day, erect and occupy a temporary overnight shelter upon the land located at 498 Ottawa Street.

16. Pursuant to the Zoning Bylaw and Parks and Open Space Bylaw, camping and any other form of overnight sheltering is prohibited on the City Lands except, for a person experiencing homelessness, at 498 Ottawa Street, and as otherwise in accordance with the Parks and Open Space Bylaw.

#### *Community Charter*

17. Pursuant to s. 46 of the *Community Charter*, no person, except as permitted by law or other enactment, may cause a nuisance on, obstruct, foul or damage any part of a highway or other public place.

#### **History of Lower Patricia Boulevard Encampment (LPBE)**

18. The City Lands, and encampments thereupon, have been the subject of previous civil proceedings.
19. In or around the months of May and June 2021, two encampments were established on City-owned lands by unhoused individuals. The first was located at and around the civic address of 231 George Street (the “**George Street Encampment**”). The second was located in the vicinity of Lower Patricia Boulevard, also known as “Moccasin Flats” or the Lower Patricia Boulevard Encampment (the “**LPBE**”).
20. The area comprising the LPBE is located entirely within the City Lands.
21. By October, 2021, the George Street Encampment and LPBE contained approximately 50 tent structures with over 80 occupants, the vast majority of whom were located at the LPBE.

#### *The Stewart and Johnny Proceedings*

22. On June 2, 2021, the City directed the initiation of injunctive proceedings to enforce the City’s bylaws with respect to the George Street Encampment and LPBE. At that time, temporary overnight sheltering was prohibited in all areas of the City.
23. On August 25, 2021, the City filed a petition in the Supreme Court of British Columbia indexed as *Prince George (City) v Stewart*, Prince George Registry Docket No. S2159834 (“**Stewart**”) seeking, *inter alia*, injunctive relief to vacate and clear the George Street Encampment and LPBE.

24. Following the hearing of the petition, and by reasons for judgment issued on October 22, 2021, the Honourable Chief Justice Hinkson, *inter alia*:
  - a. Ordered the George Street Encampment be vacated and cleared of structures, tents, shelters, shopping carts, stoves, rubbish, objects, personal chattels, and other things, which things were not to be brought or erected to anywhere other than the LPBE; and
  - b. Defined the LPBE as “a green space at the end of 5<sup>th</sup> Avenue”; and
  - c. Dismissed the City’s application for relief intended to vacate and clear the LPBE on the basis that “absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the encampments” (the “**Stewart Order Conditions**”),  
  
(the “**Stewart Order**”).
25. Following the issuance of the *Stewart* Order, in October 2021, the British Columbia Housing Management Commission (“**BC Housing**”) commenced operations at a previously acquired property located at 650 Dominion Street in downtown Prince George known as the “**Knights Inn**” for the purpose of providing housing to unhoused people.
26. In November 2021, many of the occupants of the George Street Encampment and LPBE relocated to rooms in the Knights Inn. In mid-November 2021, the City dismantled and cleared the George Street Encampment.
27. On November 17, 2021, the City dismantled and cleared those areas of the LPBE which it then understood to be abandoned (the “**LPBE Dismantling**”).
28. On November 24, 2021, the City filed a petition in the Supreme Court of British Columbia indexed as *Prince George (City) v. Johnny*, Prince George Registry Docket No. S2160169 (“**Johnny**”) seeking to close the LPBE to all forms of sheltering. The defendants in that proceeding included Mr. Johnny.
29. In December 2021, the City applied in the *Johnny* proceeding for an interlocutory injunction to close the LPBE on the basis that the *Stewart* Order Conditions had been satisfied.
30. In reasons for judgment delivered February 23, 2022, The Honourable Mr. Justice Coval found, *inter alia*, that:

- a. The LPBE was at that time a fluid, complex and difficult situation which, since June 2021, had created serious intrusions on the neighbouring residents and businesses;
- b. In December 2021, approximately eight people continued to camp at the LPBE;<sup>1</sup>
- c. In the face of the *Stewart* Order, the City was not entitled “to dismantle much of the LPBE before returning to court to seek an order to do so”;<sup>2</sup>
- d. Before the LPBE Dismantling, the City “failed in the admittedly difficult task of identifying, as much as reasonably possible, how many people were regularly occupying the camp and how their shelters and belongings should be managed”;<sup>3</sup>
- e. Some of the LPBE occupants who relocated to the Knights Inn lost their personal belongings in the LPBE Dismantling without reasonable opportunity to collect all that was essential and important to them;
- f. Other people, who did not relocate to Knights Inn, “left the camp only because their shelters and belongings were dismantled and destroyed in their absence and they were not offered housing”;
- g. The available units at the Knights Inn were insufficient to house all the occupants of the LPBE; and
- h. The City breached the *Stewart* Order, and this breach inflicted serious harm on vulnerable people.

### **City’s Course of Action Following the *Johnny* Decision**

31. Following the *Johnny* decision, and in acceptance of the conclusions of Justice Coval, the City embarked on a course of action intended to fulfill the *Stewart* Order Conditions and, in the short term, to make adequate financial reparations for the harm caused by the LPBE Dismantling.
32. On March 24, 2022 the City issued a public statement, accepting the findings of Mr. Justice Coval pertaining to the LPBE Dismantling and apologizing to all those who experienced trauma and harm as the result of the City’s actions.

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<sup>1</sup> At para 73

<sup>2</sup> At para 71

<sup>3</sup> At para 72

33. Commencing in July 2022, the City voluntarily initiated and conducted a process to financially compensate those who had sustained losses directly in consequence of the LPBE Dismantling.
34. The City has taken no further steps to advance litigation in either the *Stewart* or *Johnny* actions. A notice of appeal filed by the City in the *Stewart* action was abandoned. In January, 2023, the City settled and paid the respondents' costs in the *Stewart* and *Johnny* proceedings.
35. Mindful of the *Stewart* Order, the harm which was unintentionally caused by the LPBE Dismantling, and the desire to unequivocally fulfill the *Stewart* Order Conditions before returning to court, since the LPBE Dismantling the City has taken a cautious and limited role in the LPBE.
36. Since November 17, 2021, the LPBE has been occupied by a varying and transient population of individuals. The sole exception is Mr. Johnny, who has continuously maintained an encampment in the LPBE for well over three years.

#### **City & Provincial Efforts to Establish Suitable Housing and Daytime Facilities**

37. Between approximately January and June of 2023, the City engaged in discussions with the Province of British Columbia (the "**Province**") which culminated in the execution of a Memorandum of Understanding by the Province and City on June 16, 2023 (the "**MOU**"), setting out commitments by the City and the Province intended to build the facilities and supports necessary to transition those sheltering outdoors into indoor shelter.
38. On May 24, 2023 the Province announced the City as the pilot community for its HEART & HEARTH initiative, which are programs intended to, *inter alia*,:
  - a. resolve encampments and prevent future homelessness through coordinated outreach efforts to people in encampments to address their needs, and identify housing or shelter needs in the community; and
  - b. provide funding for the creation of new emergency housing and shelter options with the expectation that municipalities will provide land and fast-track approvals for these new projects to expand shelter capacity for those in need.
39. In May 2023, the City proposed to the Province and BC Housing the use of City-owned lands located at located at 397 3<sup>rd</sup> Avenue (the intersection of London Street and 3<sup>rd</sup> Avenue, approximately 100 m north of Mr. Johnny's encampment in the LPBE), for the creation of a transitional housing facility which the City proposed be constructed under the mandate of BC Housing:



- a. As a safe and comfortable place to accommodate unhoused people in the short to medium-term (including both daytime and overnight sheltering) while they are connected with long-term housing solutions by BC Housing and its partners; and
  - b. With a priority given to LPBE occupants so as to support the closure of the LPBE (the “**3rd Avenue Site**”).
40. On January 2, 2024 the City issued a public statement indicating that it had set three priorities pertaining to the City and its unhoused community, as follows:
  - a. To advocate to the Province and take other steps in support of sufficient accessible shelter and housing space being established in Prince George so that no person is required to shelter outdoors, particularly during the harsh winter months;
  - b. In doing so, achieve the Stewart Order Preconditions so as to allow the LPBE to be closed to full-time camping and occupation; and
  - c. Improve and support safety and order within the downtown area of Prince George so that businesses can thrive and the area is safe for all members of the community.
41. In June, 2024, BC Housing commenced construction of the 3rd Avenue Site, which was supported by the City through both the use of City-lands, expedited decisions regarding land use, and through the City’s investment of approximately \$500,000 in preparatory site servicing work.
42. Construction of the 3rd Avenue Site completed in late 2024 and commenced tenanting and operations in January, 2025.
43. The 3rd Avenue Site offers the following features and amenities to residents:
  - a. 42 private rooms;
  - b. Shared washrooms (one washroom shared by two private rooms)
  - c. Laundry facilities;
  - d. Indoor and outdoor 24-hour accessible communal areas;
  - e. Large communal gathering, recreational, meeting, dining and TV lounge area which is open 24-hours per day;

- f. Provision of two meals a day to residents through an on-site modern commercial kitchen;
- g. 24-hour staffing with a minimum of 3 staff members
- h. A secure environment, including restricted access and internal and perimeter security features;
- i. “Low barrier” access, meaning the facility does not have a sobriety or drug abstinence requirement; and
- j. On-site personal support services, including:
  - i. Healthcare referrals;
  - ii. Wellness checks;
  - iii. Life skills training;
  - iv. Mental health supports;
  - v. Connection and referral to community services and/or support groups;
  - vi. Personalized assistance in achieving the ultimate goal of transitioning into supportive and independent housing; and
  - vii. Harm reduction supplies and naloxone kits.

44. In addition to the 3rd Avenue Site, BC Housing, through its contracted operators, continues to maintain and operate shelter, housing and support services at facilities within the City of Price George, which include the following:

- a. Knights Inn (650 Dominion Street) – 44 supportive housing units, since October 2021;
- b. North Star Inn (1550 Victoria Street) – 96 supportive housing units, with initial tenancing commencing in May 2024; and
- c. First Avenue Integrated Health & Housing Facility – 50 supportive housing units, since March 2022.

45. In addition to these facilities, a second phase of the First Avenue Integrated Health & Housing Facility is currently under construction, is expected to become operational in the year 2027, and will include a health clinic and 51 new supportive housing units.

46. All supportive housing units funded by BC Housing provide residents with 24-hour access to their units.

### **Housing or Offers of Accessible Housing Provided to LPBE Residents**

47. As at the date of the *Stewart* Order (October 22, 2021), approximately 80 people were encamped in the LPBE and the George Street Encampment, with the great majority located at the LPBE.
48. In May, 2024, BC Housing, through the HEART & HEARTH program, began deployment of encampment response teams to the LPBE, made up of BC Housing staff and local non-profit partner organizations (the “**Encampment Response Teams**”).
49. On May 13, 2024, the Encampment Response Teams compiled a “by-name list” of the approximately 44 individuals sheltering overnight at the LPBE (the “**May 2024 Occupants**”).
50. As of February 6, 2025, of the 44 May 2024 Occupants:
  - a. 43 have been transitioned out of the LPBE and into accessible shelter or housing by BC Housing and its partners, or have otherwise departed the LPBE; and
  - b. One person – Mr. Johnny – remains encamped at the LPBE.
51. On multiple occasions since at least November 2021, Mr. Johnny has been offered shelter and housing by BC Housing, its non-profit partner organizations and/or the Encampment Response Teams.
52. Mr. Johnny has and continues to communicate to the Encampment Response Teams that he is not interested in indoor shelter, supportive housing or rent supplement options, and has declined to engage with BC Housing or its partners.
53. The remaining present occupants of the LPBE have arrived at the LPBE since May 13, 2024 and have either
  - a. declined to engaged with the Encampment Response Teams;
  - b. communicated to Encampment Response Teams that they are not interested in indoor shelter options;
  - c. communicated to Encampment Response Teams that they are interested in indoor shelter only within specific parameters which cannot reasonably be met (i.e. will

only accept housing at a site that permits large dogs; will only accept housing in a specific building); or

d. are scheduled to move to indoor shelter imminently.

### **Fulfillment of *Stewart* Order Conditions**

54. The *Stewart* Order Conditions were fulfilled as of January, 2025. Specifically, suitable housing (including daytime facilities) is now available and accessible to the occupants of the LPBE at the 3rd Avenue Site.
55. While Mr. Johnny and other occupants of the LPBE are not obliged, and cannot be compelled, to accept housing in the 3rd Avenue Site or any other housing facility, they cannot maintain a right to encamp upon public lands while accessible shelter is available, and indeed has been expressly offered to them.
56. The *Stewart* Order was made in the particular circumstances of that case, taking judicial notice of the harsh northern winter climate in Prince George and the COVID-19 pandemic, in order to support the physical well-being of people sheltering outdoors, until suitable indoor shelter was available to them. The *Stewart* Order was not intended to grant to Mr. Johnny or any other LPBE occupant a right to indefinitely occupy and encamp upon public lands despite the availability of suitable indoor shelter.
57. By virtue of suitable shelter or housing having been offered and remaining accessible to Mr. Johnny and other persons occupying the LPBE, Mr. Johnny and other such individuals:
  - a. cannot establish a need to remain encamped in the LPBE, the City Lands or elsewhere upon lands owned by the City; and
  - b. cannot, in these circumstances, assert a right pursuant to Section 7 of the *Charter* to erect temporary overnight shelter upon City-owned lands.
58. In consequence of the fulfilment of the *Stewart* Order Conditions, the right to erect shelter on any portion of the LPBE area is limited to the right to erect temporary overnight shelter at 498 Ottawa Street, in accordance with the provisions of the Parks and Open Space Bylaw.

## **Present Status of LPBE, Permitted Uses & City Remediation Efforts**

59. Given the fulfilment of the *Stewart* Order Conditions, the use of the City Lands for camping or overnight sheltering purposes, with the exception of temporary overnight sheltering in compliance with the relevant provisions of the Parks and Open Space Bylaw, is an unauthorized and prohibited use of the City Lands and a trespass pursuant to the *Trespass Act*, RSBC 2018, c. 3 (the “**Trespass Act**”).
60. The City Lands are presently strewn with refuse and abandoned items, are in a fouled and unsafe condition, and require cleaning and remediation.
61. Mr. Johnny has constructed one or more semi-permanent structures which he occupies on or near the eastern end of the LBPE which, along with the surrounding refuse, debris and other accumulated materials, covers an area of approximately 875 m<sup>2</sup> (0.22 acres).
62. The accumulated debris and materials within Mr. Johnny’s encampment area include evidence of a current or former use of the area as a bicycle “chop shop” (a place where stolen bicycles are disassembled and sold for parts or as scrap metal).
63. Currently, there remain very few structures or other encampments upon the City Lands. The majority of structures previously upon the City Lands, including the majority of the “tiny homes”, have been either destroyed by fires, or dismantled by individuals unknown to the City.
64. The relief sought herein is intended to allow the City to clear and remediate the City Lands, ensuring that during this remediation, a reasonable portion of 498 Ottawa Street remains available at all times for temporary overnight sheltering in compliance with the relevant provisions of the Parks and Open Space Bylaw.

## **Part 2: RELIEF SOUGHT**

1. A declaration that “suitable housing and daytime facilities” within the meaning of the October 22, 2021 order of the Honourable Chief Justice Hinkson made in *Prince George (City) v Stewart*, Prince George Registry Docket No. S2159834 includes:
  - a. The 3rd Avenue Site; and
  - b. Any other shelter, housing or dwelling in which a person is permitted to stay overnight and remain during the daytime and is accessible to that person.

2. A declaration that any person encamped upon the City Lands refusing to apply to BC Housing for access to suitable housing and daytime facilities, or refusing offers by BC Housing or their partners of access to suitable housing and daytime facilities:
  - a. is not a person without access to suitable indoor housing and daytime facilities;
  - b. does not possess a right to encamp or erect temporary overnight shelter upon any City-owned property; and
  - c. has contravened the Zoning Bylaw and the Parks and Open Space Bylaw by maintaining and occupying an encampment upon a portion of the City Lands.
3. A declaration that the establishment and operation of the 3rd Avenue Site, and related offers to shelter therein to those encamped upon the LPBE, fulfills the October 22, 2021 order of the Chief Justice Hinkson that “absent other suitable housing and daytime facilities, the occupants of those encampments must be permitted to stay at the [LPBE] encampment.”
4. A declaration that any encampment upon the City Lands which has not been authorized by the City is a prohibited use of those lands pursuant to the Zoning Bylaw and Parks and Open Space Bylaw, except as in accordance with the temporary overnight sheltering provisions of the Parks and Open Space Bylaw.
5. A declaration that Mr. Johnny:
  - a. is not a person without access to indoor shelter space, and accordingly does not possess a right to encamp or erect temporary overnight shelter upon any City-owned property; and
  - b. has contravened the Zoning Bylaw and the Parks and Open Space Bylaw by maintaining and occupying an encampment upon a portion of the City Lands.
6. Interim, interlocutory and permanent injunctive relief enjoining the use of the City Lands for overnight sheltering, daytime sheltering, or any form of encampment, subject only to the temporary overnight sheltering use of 498 Ottawa Street in the areas designated by the City as authorized by the Parks and Open Space Bylaw or as otherwise authorized in writing by the City.
7. An order that that City may, as of the date of the Order of this Court:
  - a. Enclose with a fence or otherwise demark all or portions of the City Lands, including that portion of 498 Ottawa Street designated by the City for temporary overnight sheltering; and

- b. Prohibit any individuals from entering onto the City Lands, excepting only (i) individuals encamped therein as at the date of commencement of this action, and (ii) individuals who do not have accessible indoor shelter available to them and who wish to erect temporary overnight shelter at 498 Ottawa Street in the areas designated by the City, as authorized by the Parks and Open Space Bylaw.
8. An order that Mr. Johnny and any other person encamped upon the City Lands are enjoined from (i) entering the City Lands, and (ii) maintaining an encampment upon any lands owned by the City, unless authorized by the City in writing, and the effective dates of such an injunction upon Mr. Johnny and any other person encamped upon the City Lands shall be 7 days following the date upon which Mr. Johnny or any other individual encamped upon the City Lands:
  - a. Refuses to make an application to BC Housing for access to shelter or housing; or
  - b. Refuses or fails to accept an offer of shelter within the 3<sup>rd</sup> Avenue Facility.
9. An order that, by the effective date of the Order of this Court enjoining Mr. Johnny and other individuals encamped upon the City Lands from encamping upon the City Lands, any person so enjoined must remove from the City Lands all personal property they wish to retain.
10. A declaration that, as of the effective date of the Order of this Court enjoining Mr. Johnny and other individuals encamped upon the City Lands from encamping upon the City Lands, any person so enjoined who remains upon the City Lands commits a trespass, pursuant s. 2 of the *Trespass Act*.
11. An order, following the effective date of the injunction enjoining the last remaining person encamped upon the City Lands from entering upon the City Lands, that the City, and its employees, agents and contractors, may enter upon the City Lands and:
  - a. Dismantle and remove from City Lands any structures, tents, shelters, bicycles, shopping carts, stoves, rubbish, objects, personal chattels, and other things remaining upon the City Lands;
  - b. Permanently dispose of items removed from the City Lands, without recourse against the City, its employees, agents or contractors; and
  - c. Remediate the condition of the City Lands to restore it to an unfouled and unhazardous condition.
12. An order that the City, including its employees, contractors and agents, are authorized to temporarily close portions of 498 Ottawa Street to temporary overnight sheltering for purposes of site remediation on the following terms:

- a. No more than 50% of the total land area of 498 Ottawa Street identified by the City as being available for temporary overnight sheltering may be closed to temporary overnight sheltering use at one time;
- b. Once remediation of 498 Ottawa Street property is complete, the City will reopen all areas of 498 Ottawa Street identified by the City as being available for temporary overnight sheltering; and
- c. This order shall not prevent the City from exercising its legislative authority to add, remove or change the City parks or public spaces in which temporary overnight sheltering is authorized.

### **Part 3: LEGAL BASIS**

1. Pursuant to s. 8 of the *Community Charter*, the City may regulate public places and municipal services by bylaw, including parks. This authority includes the power to regulate, prohibit, and impose requirements respecting persons, property, things and activities related to the use of parks and other public places.
2. The City is further empowered to:
  - a. Regulate the use of lands within the City, including by enactment of zoning bylaws, pursuant to Part 14 of the *Local Government Act*;
  - b. Regulate and prohibit in relation to all uses of or involving a highway or part of a highway, by bylaw, pursuant to section 36 of the *Community Charter*, and
  - c. As an owner of lands, control access to and use of City property, pursuant to, *inter alia*, its rights under the *Trespass Act*.
3. The City's exercise of its authority over its lands has been lawfully adapted, through the temporary overnight sheltering provisions set out in the Parks and Open Space Bylaw, to accommodate the established section 7 *Charter* rights of unsheltered individuals.
4. Section 7 rights are framed as the "right not to be deprived" of life, liberty and security of the person. Allegations of infringement upon this right must be based on a "particular state action alleged to create a particular deprivation."<sup>4</sup> With respect to homelessness, the Court in *Victoria (City) v Adams*, 2009 BCCA 563 ("**Adams BCCA**") identified a limited right for unsheltered individuals to be free from undue state interference when erecting a

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<sup>4</sup> *Adams BCCA* at para. 108



temporary shelter overnight in a public place. The issue between the parties to that litigation was characterized by the Court as follows:

The claims of the homeless people recognized by the trial judge have a narrow compass in absolute terms – they are the right to cover themselves with the most rudimentary form of shelter while sleeping overnight in a public place, when there are not enough shelter spaces available to accommodate all of the City’s homeless. The City, on the other hand, bears the responsibility to the public to preserve public places for the use of all, and of necessity focuses on the wide public impact of any use of public places for living accommodation.<sup>5</sup>

5. As identified in *Adams BCCA*, the right not to be deprived of the right to erect temporary overnight shelter arises specifically when the number of unsheltered individuals outnumbers the accessible indoor shelter spaces which are locally available. The Parks and Open Space Bylaw acknowledges this limited right by permitting persons meeting the definition of “homeless person” to erect temporary overnight shelter at 498 Ottawa Street (identified at Schedule A to the Parks and Open Space Bylaw):

9.2 Despite section 9.1 of this Bylaw, where there is no accessible overnight shelter accommodation available within the City of Prince George, a homeless person may erect and occupy a temporary overnight shelter in an Open Space Area identified in section 1 of “Schedule “A”, as attached and forming part of this Bylaw, but subject always to:

- (a) the restrictions and regulations set out in sections 2 and 3 of Schedule “A” as attached to and forming part of the Bylaw; and City of Prince George Parks and Open Space Bylaw No. 7370, 2002 – CONSOLIDATED Page 7 Revised: May 8, 2023 Document Number: 666406
- (b) the regulations set out in section 9.3 of this Bylaw;

9.3 A temporary overnight shelter permitted under section 9.2 must not be erected or occupied before 7:00 p.m. on any one day, and must be taken down and removed from the Open Space Area before 9:00 a.m. on the next day following.

[emphasis added]

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<sup>5</sup> *Adams BCCA* at para. 4

6. The restrictions set out in sections 2 and 3 of Schedule “A” relate to:
  - a. Certain areas and facilities where temporary overnight sheltering is not permissible, such as on roadways and within playgrounds; and
  - b. The applicability of the City of Prince George Fire By Law No. 4136 and any orders of the Fire Chief.
7. The provisions of the Parks and Open Space Bylaw thus accord with the limited section 7 right identified in *Adams BCCA*.
8. Pursuant to the Parks and Open Space Bylaw and the Zoning Bylaw, the following restrictions, *inter alia*, apply to 498 Ottawa Street, as well as to Block M and Block N:
  - a. All Open Space Areas are closed to the public between the hours of 11:00 pm and 6:00 am on all days;<sup>6</sup>
  - b. No person shall set up a tent or other temporary abode in an Open Space Area;<sup>7</sup>
  - c. No person shall deposit, store, or leave unattended any moveable personal property, other than an automobile, in or on any Open Space Area;
  - d. No person shall construct any building, structure or other improvement in any Open Space Area without the prior written authorization of the City;<sup>8</sup>
  - e. Campground is not a permitted use of the land;<sup>9</sup> and
  - f. No residential uses are permitted, with the sole exception of “residential security / operator unit.”<sup>10</sup>
9. Despite the foregoing general restrictions, and pursuant to the Parks and Open Space Bylaw, unsheltered individuals may erect temporary overnight shelter at 498 Ottawa Street, in areas designated by the City.
10. Mr. Johnny may only assert a right to erect a temporary overnight shelter at 498 Ottawa Street in circumstances where there is no accessible indoor overnight shelter available to him within the City of Prince George. When that right is not engaged by the requisite

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<sup>6</sup> Parks and Open Space Bylaw s. 17.1

<sup>7</sup> Parks and Open Space Bylaw s. 9.1

<sup>8</sup> Parks and Open Space Bylaw s. 2.5

<sup>9</sup> Zoning Bylaw ss. 1.6.7 and 13.1

<sup>10</sup> Zoning Bylaw s. 13.1.3

circumstances, all of the restrictions on the use of 498 Ottawa Street, the City Lands, and all other public spaces apply to Mr. Johnny.

11. Individuals who have accessible indoor shelter available to them are not “homeless” within the meaning of the law as it pertains to the *Charter* right not to be deprived of the ability to erect temporary overnight shelter. This principle was set out in *Adams BCCA* (in which the injunction to clear the park was conditional upon housing being made available to individuals sheltering there):<sup>11</sup>

Sections 14(1)(d) and 16(1) of the Parks Regulation Bylaw No. 07-059 are inoperative insofar and only insofar as they apply to prevent homeless people from erecting temporary overnight shelter in parks when the number of homeless people exceeds the number of available shelter beds in the City of Victoria.

[emphasis added]

12. This principle was further acknowledged in *Vancouver Fraser Port Authority v. Brett*, 2020 BCSC 876, in which the Court found that “[a]s alternate housing can and is being made available to those at the VFPA lands who have migrated there from the Park, the need for them to be at the VFPA lands has not been established.”<sup>12</sup>

13. The court in *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 similarly noted that: <sup>13</sup>

“...the decision to erect a shelter outside, whether individually or in a group, if there are other viable and accessible options, cannot justify permitting the City’s homeless to sleep and erect shelters in public spaces as a fundamental personal choice engaging dignity concerns.”

14. Notably, it is implicit from the conditions devised by the Court in *Adams BCCA* that obtaining accessible indoor shelter or long-term housing is the ultimate intended outcome for unhoused people. The City is not aware of any Canadian jurisprudence which states or implies that permanent or long-term outdoor encampments are a desirable outcome for unsheltered individuals, local governments, or the broader community.
15. Accessible indoor shelter is available and has been offered to Mr. Johnny, not only within the City of Prince George, but mere metres from his current occupancy at the LPBE. This housing is secure, warm, sanitary and provides meals and hygiene facilities. In the present circumstances, Mr. Johnny can no longer claim a Section 7 right to erect

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<sup>11</sup> *Adams BCCA* at para. 166

<sup>12</sup> *Brett* at para. 114

<sup>13</sup> *Shantz* at para. 223

temporary overnight shelter, and cannot reasonably claim that indoor shelter and suitable indoor facilities are not available to him.

16. The state cannot control the manner in which an individual wishes to prioritize his or her rights to life, liberty and security of the person. In situations where an individual's liberty is at odds with that individual's safety and security of the person, the City cannot compel that individual to prioritize one over the other.
17. Accordingly, the City cannot compel Mr. Johnny to accept offers of accessible indoor shelter which are open to him. Mr. Johnny is at liberty to continue living outdoors if he so chooses. In the current circumstances, however, he is not at liberty to do so on City property.
18. While accessible indoor accommodation remains available to Mr. Johnny, he has no lawful basis upon which to assert or maintain a right to encamp on the City lands, or any other public space in the City.

Plaintiff's address for service: Stewart McDannold Stuart  
2<sup>nd</sup> Floor, 837 Burdett Avenue  
Victoria, BC, V8W 1B3


Fax number address for service: n/a

Email address for service: jlocke@sms.bc.ca

Place of trial: Prince George, British Columbia

The address of the registry is: J.O. Wilson Square, 250 George Street, Prince  
George, BC V2L 5S2

Date: February 25, 2025

  
\_\_\_\_\_  
Jeffrey W. Locke  
Lawyer for the plaintiff,  
City of Prince George

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
  - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The plaintiff, City of Prince George, claims against the defendant and other people who are occupying an encampment on City-owned lands in Prince George without the authorization of the City. This action arises in the context of a previous October 22, 2021 order of the Court, permitting those in the encampment to so remain until suitable housing and daytime facilities are made available to those encamped. Those conditions have now been achieved, and relief is sought herein to disband the remaining encampment.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money

- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

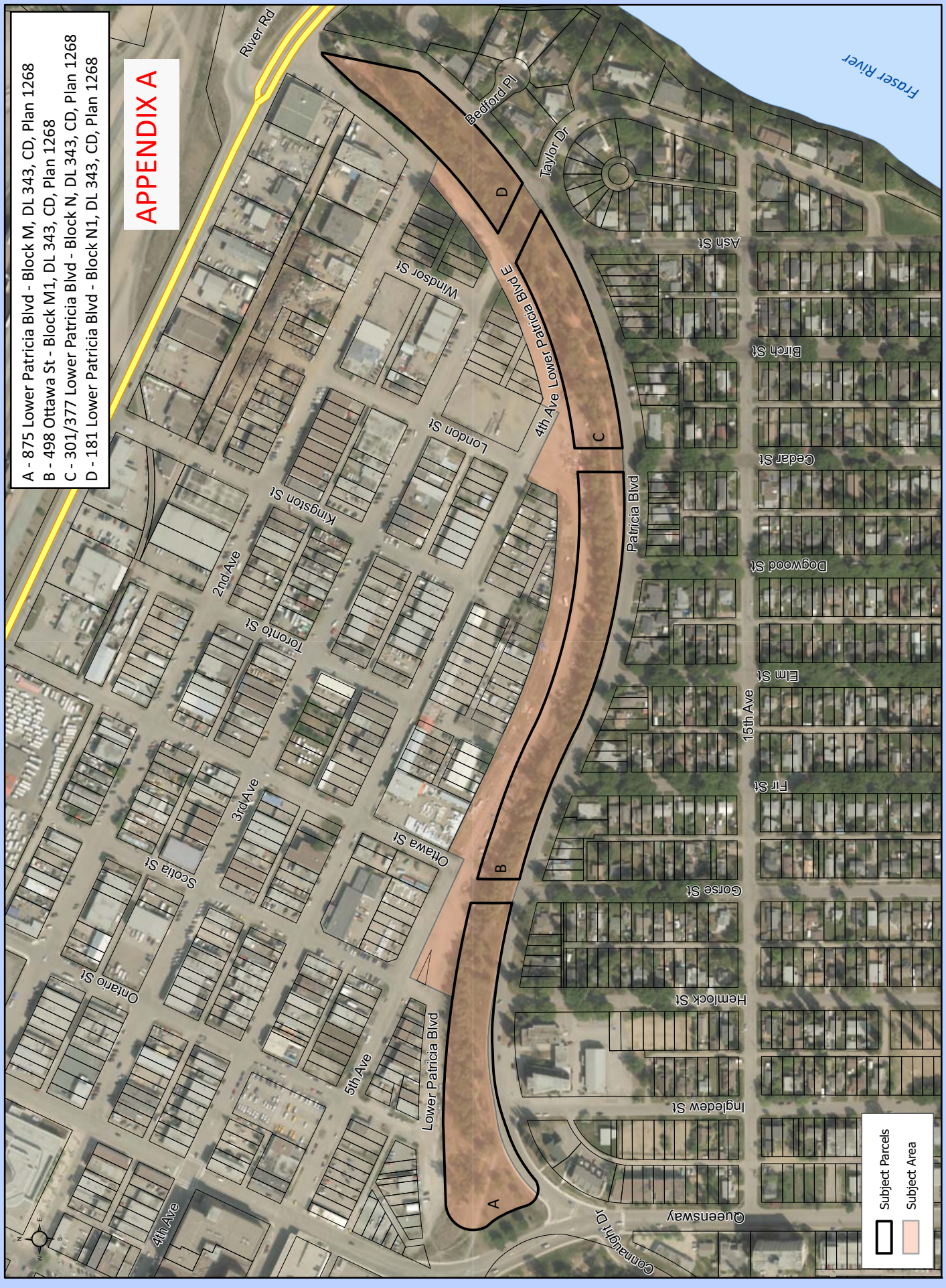
**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

- A - 875 Lower Patricia Blvd - Block M, DL 343, CD, Plan 1268
- B - 498 Ottawa St - Block M1, DL 343, CD, Plan 1268
- C - 301/377 Lower Patricia Blvd - Block N, DL 343, CD, Plan 1268
- D - 181 Lower Patricia Blvd - Block N1, DL 343, CD, Plan 1268

APPENDIX A



Subject Parcels  
 Subject Area

0 50 100 150 Meters  

 Coordinate System: NAD 83 UTM Zone 18N  
 Projection: Transverse Mercator  
 Datum: North American 1983
   
 1:4,250

**Site Map**

